

# **EXHIBIT 3**



A Legal Professional Association

**Michael A. Galasso**  
Admitted in Ohio, Kentucky, and Indiana  
*mgalasso@rkpt.com*

April 8, 2024

**VIA EMAIL smarkley@nicholaslaw.org**  
**AND CERTIFIED MAIL**

Ms. Christi McCracken  
c/o Shaun Markley, Esq.  
Nicholas & Tomasevic, LLP  
225 Broadway, 19th Floor  
San Diego, CA 92101

RE: Your Client: Christi McCracken  
Our Client: GigSmart, Inc.  
RKPT File No.: CL2058 L010

Dear Mr. Markley:

Enclosed please find a Demand for Arbitration which has been filed with the American Arbitration Association.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Michael A. Galasso'.

Michael A. Galasso

MAG:rdb  
Enclosures

cc: William T. Nagle, Esq. (via email w/encls.)

AMERICAN  
ARBITRATION  
ASSOCIATION®INTERNATIONAL CENTRE  
FOR DISPUTE RESOLUTION®**COMMERCIAL ARBITRATION RULES  
DEMAND FOR ARBITRATION**

**Mediation:** If you would like the AAA to contact the other parties and attempt to arrange a mediation, please check this box  There is no additional administrative fee for this service.

You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence administration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.

Name of Respondent: **Christi McCracken**Address: **c/o Shaun Markley, Esq., Nicholas & Tomasevic, 225 Broadway, 19th Floor**

City: <b>San Diego</b>	State: <b>California</b>	Zip Code: <b>92101</b>
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Phone No.: <b>619-325-0492</b>	Fax No.: <b>619-325-0496</b>
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Email Address: **[REDACTED]**Name of Representative (if known): **Shaun Markley, Esq.**Name of Firm (if applicable): **Nicholas & Tomasevic**Representative's Address: **225 Broadway, 19th Floor**

City: <b>San Diego</b>	State: <b>California</b>	Zip Code: <b>92101</b>
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Phone No.: <b>619-325-0492</b>	Fax No.: <b>619-325-0496</b>
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Email Address: **smarkley@nicholaslaw.org**

The named claimant, a party to an arbitration agreement which provides for arbitration under the Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration.

Brief Description of the Dispute:

**Declaratory and injunctive relief - terms of contract; class and representative action waiver**Dollar Amount of Claim: **\$ nonmonetary relief**Other Relief Sought:  Attorneys Fees  Interest  Arbitration Costs  Punitive/Exemplary Other: **declaratory and injunctive**Amount enclosed: **\$ 2,200**In accordance with Fee Schedule:  Flexible Fee Schedule  Standard Fee Schedule

Please describe the qualifications you seek for arbitrator(s) to be appointed to hear this dispute:

**Contract**Hearing locale: **Cincinnati, Ohio**(check one)  Requested by Claimant  Locale provision included in the contract

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DEMAND FOR ARBITRATION**

Estimated time needed for hearings overall: <b>8</b>		hours or <b>1</b>	days
Type of Business:			
Claimant: <b>Technology Platform</b>		Respondent: <b>Independent Contractor</b>	
Are any parties to this arbitration, or their controlling shareholder or parent company, from different countries than each other?			
No			
Signature (may be signed by a representative):  <b>/s/ Michael A. Galasso</b>		Date:  <b>4/4/2024</b>	
Name of Claimant: <b>GigSmart, Inc.</b>			
Address (to be used in connection with this case): <b>999 18th Street, Ste 1750S</b>			
City: <b>Denver</b>		State: <b>Colorado</b>	Zip Code: <b>80202</b>
Phone No.: <b>720-828-7720</b>		Fax No.:	
Email Address: <b>support@gigsmart.com</b>			
Name of Representative: <b>Michael A. Galasso</b>			
Name of Firm (if applicable): <b>Robbins Kelly Patterson &amp; Tucker, LPA</b>			
Representative's Address: <b>312 Elm Street, Suite 2200</b>			
City: <b>Cincinnati</b>		State: <b>Ohio</b>	Zip Code: <b>45202</b>
Phone No.: <b>513-721-3330</b>		Fax No.: <b>513-721-5001</b>	
Email Address: <b>mgalasso@rkpt.com</b>			
To begin proceedings, <b>please file online at <a href="http://www.adr.org/fileonline">www.adr.org/fileonline</a></b> . You will need to upload a copy of this Demand and the Arbitration Agreement, and pay the appropriate fee.			

# GigSmart Terms of Use and End User License Agreement

Last Revised: 01/30/2024

**IMPORTANT NOTICE: THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION AND CLASS ACTION WAIVER. IT AFFECTS YOUR LEGAL RIGHTS AS DETAILED IN THE ARBITRATION AND CLASS ACTION WAIVER SECTION BELOW. PLEASE READ CAREFULLY.**

ACCEPTANCE OF THESE TERMS BY DOWNLOADING THE GIGSMART APP OR BY ACCESSING, VIEWING, OR USING THE APP, OR ANY TOOLS AND SERVICES PROVIDED IN CONNECTION WITH THE APP OR THE SITES (COLLECTIVELY THE APP, THE SITES, AND ALL RELATED TOOLS AND SERVICES) ARE REFERRED TO AS THE PLATFORM. YOU UNDERSTAND AND AGREE TO BE BOUND BY ALL TERMS AND CONDITIONS CONTAINED IN THESE TERMS OF USE.

IF YOU OBJECT TO ANYTHING IN THESE TERMS OF USE, INCLUDING THE MANDATORY ARBITRATION PROVISION AND CLASS ACTION WAIVER IN SECTION 33, OR OTHERWISE DO NOT UNDERSTAND OR AGREE TO BE BOUND BY THESE TERMS OF USE, DO NOT USE THE SERVICE AND UNINSTALL THE APP IMMEDIATELY.

These terms and conditions and end user license agreement (collectively “Terms of Use”) set forth the terms and conditions of GigSmart, Inc. (“GigSmart”) applicable to your use of the Service. GigSmart encourages you to read these Terms of Use carefully.

All references to “you” or “your,” as applicable herein in context with the Terms, mean the person, company, entity or organization which accesses or uses the Service, in any manner, and each of your heirs, assigns, and successors. If you use the Platform on behalf of an entity, you represent and warrant that you have the authority to bind that entity, your

acceptance of the Terms will be deemed an acceptance by that entity, and “you and “your” herein shall refer to that entity.

## **1. KEY TERMS**

“GigSmart” means and includes GigSmart and its affiliates and subsidiaries and its and their investors, officers, directors, employees, agents, representatives, and assigns.

Platform means all GigSmart digital websites, digital smartphone applications, internal communications App, software, or other processes that facilitate the provision of Services by Workers who offer to provide Services or use the Platform, or Requesters requesting Services from Workers or otherwise use the Platform.

“User” means any person, company, entity or organization who accesses or uses the Platform or Services that GigSmart offers, including parents and caregivers, whether or not such User personally installed the Worker, the Requester or both of the Apps or created an account.

“Worker” means any User who offers to provide Services or otherwise uses the Platform to provide, receive payment for or facilitate the provision of Services.

“Requester” means any User requesting Services from workers or otherwise uses the Platform to receive, pay for or facilitate the acquisition of Services.

“Content” means texts, chat messaging, or calls through GigSmart’s internal communications App, graphics, images, music, software, audio, video, information or other materials, including but not limited to profile information, Service requests, Service offers, message threads, reviews, scheduling and calendar information, and other information or materials available on or through the Platform.

“GigSmart Content” means all Content GigSmart makes available on or through the Platform, including any Content licensed from a third party, but excluding User Content.

“User Content” means all Content you submit, post, upload, publish, or transmit on or through the Platform, including but not limited to chat messaging or calls through

GigSmart's internal communications App, photographs, profile information, descriptions, postings, and reviews.

"Collective Content" means both User Content and GigSmart Content.

"Services" means all Services listed, scheduled, offered or provided by Workers, or sought, scheduled or received by Requesters through the Platform.

"Confidential Information" means any and all information related to GigSmart's or any Customer's business (including trade secrets, technical information, business forecasts and strategies, marketing plans, customer and supplier lists, personal information, financial data, and proprietary information of third parties including Customers) that GigSmart and/or the Customer considers to be confidential or proprietary or GigSmart has a duty to treat as confidential.

"Intellectual property rights" means patents, copyrights, moral rights, trademarks, and trade secrets, but not privacy or publicity rights.

## 2. MODIFICATIONS

You understand and agree that GigSmart may revise, modify and/or supplement these Terms of Use (the "Revised Terms of Use") at any time. Any Revised Terms of Use will be effective immediately after notice is sent to you via the GigSmart internal email system or by such other forms of notice as may be determined by GigSmart. If you do not agree to the Revised Terms of Use, you must stop using the Platform or Services offered by the Company and close your account (and uninstall the App where necessary). You can close your account through the Account Settings page or by emailing the Company at [support@gigsmart.com](mailto:support@gigsmart.com). By continuing to use the Platform and Services following notice, or by failing to close your account or uninstall the App, you hereby expressly agree to be bound by the Revised Terms of Use and acknowledge that your continued use of and access to the Platform is valid consideration for the Revised Terms of Use.

GigSmart reserves the right in its sole discretion to review, improve, modify or discontinue, temporarily or permanently, the Platform and/or any features, information, materials or content on the Platform with or without notice to you. You agree that GigSmart shall not be

liable to you or any third party for any modification or discontinuance of the Platform or any portion thereof.

### **3. LICENSE & SERVICES**

Subject to the terms and conditions set forth in these Terms of Use, GigSmart grants you a personal, nonexclusive, nontransferable license to use the Platform and to download and use the App on any mobile device that you own or control, solely for your personal, non-commercial use except as expressly set forth herein.

The Platform will be in the form and format as determined by GigSmart in its sole discretion from time to time, and such form and format may limit or restrict use to certain types of devices at the exclusion of others and may have additional licensing terms restricting their use thereto.

Such license is subject to these Terms of Use and, except as expressly provided in these Terms of Use, does not include: (A) any resale or commercial use (except as expressly set forth herein) of the Service or of any content or materials contained therein ("GigSmart Content"); (B) modifying or otherwise making any derivative uses of the Service or any GigSmart Content; (C) use of any data mining, robots or similar data gathering or extraction methods; (D) reproducing, distributing, publicly performing or publicly displaying the Platform or the GigSmart Content; (E) reverse engineering or otherwise attempting to discover any source code; or (F) any use of the Service other than for its intended purpose. Any use of the Platform or the GigSmart Content other than as specifically authorized herein, without the prior, written permission of GigSmart, is strictly prohibited and will terminate the license granted herein. Such unauthorized use may also violate applicable laws, including without limitation copyright and trademark laws and applicable communications regulations and statutes. Unless explicitly stated herein, nothing in these Terms of Use shall be construed as conferring any license to intellectual property rights, whether by estoppel, implication or otherwise. This license is revocable at any time.

#### **Different terms and conditions**

Certain areas of and/or products on the Platform may have different terms and conditions posted or may require you to agree with and accept additional terms and conditions or policies. If there is a conflict between these Terms and terms and conditions or policies

posted for a specific area or product, the latter take precedence with respect to your use of that area or product.

### **The Service Offers a Venue**

The Platform merely offers tools, resources, and a venue to connect those seeking Services (Requesters) with those seeking to provide Services (Workers). You understand and agree that GigSmart: (A) does not employ, recommend or endorse any Users and has no control over the acts or omissions of any Users; (B) is not responsible or liable in any manner for the performance or conduct of any Users or other third parties online or offline; (C) makes no representations or warranties about the quality of the Services provided by any User or about your interactions or dealings with other Users; and (D) does not screen Users or automatically conduct any kind of identity or background checks except as otherwise expressly stated in these Terms of Use or on the Platform. Regardless of whether GigSmart screens users or performs a background check, you should exercise caution and perform your own screening before connecting with anyone through the Platform, meeting anyone, engaging Users or accepting engagements. GigSmart hereby expressly disclaims, and you hereby expressly release GigSmart from, any and all liability whatsoever for any controversies, claims, suits, injuries, loss, harm and/or damages arising from and/or in any way related to the Platform or your interactions or dealings with other Users, including without limitation any acts and/or omissions of Users online or offline. By using the Platform, you acknowledge and agree that you are solely responsible for your use of the Platform and the connections you make and that all use of the platform is at your sole and exclusive risk.

### **Transactions Are Between Users; Release**

The Platform may be used to help obtain or offer Services provided by Users and to facilitate payment for such Services. However, Users transact solely between themselves, and GigSmart is not a party to any transactions between Users. GigSmart hereby expressly disclaims, and you hereby expressly release GigSmart from, any and all liability whatsoever for any controversies, claims, suits, injuries, loss, harm and/or damages arising from and/or in any way related to disputes, dealings, or interactions between you and any other Users or third parties.

### **Eligibility**

You represent and warrant that you currently meet and will continue to meet the following eligibility conditions (“Eligibility Conditions”) for as long as you use the Platform: (A) you

are at least eighteen (18) years old; if you are under 18 years old, you have parental or guardian consent to use the Platform; if you are under 18 years old, and you are a volunteer for charities, or performing service hours for your school, or other agency or entity, you have parental or guardian consent; (B) you comply with all laws, rules and regulations in connection with your use of the Platform and any Services arranged through the Platform, including without limitation legal authorization to work in the jurisdiction in which you seek to provide or receive Services; (C) you have the right, authority and capacity to enter into these Terms of Use and to abide by all of the terms and conditions in these Terms of Use. By using the Platform, you understand and agree that GigSmart may rely on the above Eligibility Conditions representations and warranties as true. You understand and agree that GigSmart may revise the Eligibility Conditions from time to time and require new conditions and certifications. You understand that you will abide by such revised Eligibility Conditions or discontinue using the Platform and uninstall the App and you must discontinue use of the Platform if at any time you no longer meet the Eligibility Conditions. If GigSmart becomes aware of or believes that there are violations of the Eligibility Conditions by any User or that the User has otherwise provided any false or misleading information, it may, among other things, suspend and/or terminate such User with or without notice at its sole discretion. If your account is terminated or suspended, you agree to make no further use of the Platform after termination or during the suspension.

You understand and agree that GigSmart does not routinely verify that any or all of the Eligibility Conditions are met by any other Users and you further understand and agree that GigSmart is not responsible for assuring that the Eligibility Conditions are met or for any failure to suspend, terminate or prevent the use of the Platform by Users who do not meet the Eligibility Conditions. Except where expressly stated otherwise in these Terms of Use or on the Platform, you understand and agree that you are solely responsible for conducting any appropriate background checks and obtaining references prior to engaging another User to perform Services. You further understand and agree that you are solely responsible for making your own evaluations, decisions and assessments about whether to engage other Users to perform Services, accepting any engagements offered by other Users or otherwise interacting with other Users. GigSmart hereby expressly disclaims, and you hereby expressly release GigSmart from any and all liability whatsoever for any controversies, claims, suits, injuries, loss, harm or damages arising from or in any way related to: (a) any inaccuracy, untimeliness or incompleteness of a User's Eligibility Conditions; and/or (b) any misstatements or misrepresentations made by any Users.

Although GigSmart has no obligation to verify the Eligibility Conditions or conduct any other screenings, verifications or background checks, it reserves the right to do so in its sole discretion, and you hereby authorize GigSmart to verify any or all of the above representations and warranties you make or the other information you provide. Such verification may include, without limitation, conducting criminal background checks, sex offender registry checks, motor vehicle records checks, identification verifications, credit checks and/or using available public records. You consent to any collection, use or disclosure in order to accomplish such verification. You agree that GigSmart may take such action as it deems appropriate in its sole discretion, including without limitation suspending and/or terminating your account, should it determine, in its sole discretion, that you have violated any representation or warranty or any other provision of these Terms of Use or it otherwise determines in its sole discretion that such suspension or termination is appropriate for any reason. You acknowledge that you have no right to rely on any screenings, verifications, or other background checks undertaken from time to time by GigSmart. In the event of any suspension or termination, you agree to make no further use of the Platform after termination or during the suspension.

### **Your License to Use the Platform**

Subject to your compliance with these Terms, GigSmart grants you a limited, non-exclusive, revocable, nontransferable, and non-sublicensable license to reproduce and display Collective Content (excluding any software source code) solely and expressly for your personal and non-commercial use and only in connection with your access to and participation in the Platform. You will not use, copy, adapt, modify, prepare derivative works based upon, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the Platform or Collective Content, except as expressly permitted in these Terms. The Platform and Collective Content are provided to you AS IS. If you download or print a copy of Collective Content for personal use, you must retain all copyright and other proprietary notices contained therein. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by GigSmart or its licensors, except for the licenses and rights expressly granted in these Terms.

### **Sanctions for Violations of These Terms**

Without limiting any other rights reserved herein, GigSmart may, in its sole discretion, take any action permitted by law for any violation of these Terms or any other policy or agreement between you and GigSmart, including but not limited to removing User Content

you posted, limiting your access to the Platform, assessing monetary penalties, terminating your Account, decreasing your status or search rank, canceling quotes or postings, blocking access, investigating you, and/or cooperating with law enforcement agencies in investigation or prosecution.

### **Suspension and Termination**

We may, in our sole and absolute discretion, with or without cause, with or without prior notice and at any time, decide to limit, block, suspend, deactivate or cancel your GigSmart Account in whole or in part. If we exercise our discretion under these Terms to do so, any or all of the following can occur with or without prior notice or explanation to you: (a) your Account will be deactivated or suspended, your password will be disabled, and you will not be able to access the Platform or your User Content, or receive assistance from GigSmart support teams; (b) if appropriate in our sole discretion, we may communicate to other users that your Account has been terminated, and why it has been terminated; and (c) you may not be entitled to any payment for Platform Services cancelled or delayed or as a result of Account termination. Failure to abide by these Terms or any Code of Conduct or Cancellation Policy may result in a permanent or temporary suspension from the Platform. While suspended, you will not have the ability to apply for or work any Gigs, including "Project Gigs". Any Gigs you have applied for or are scheduled to apply for will be cancelled. You will also not be able to apply to Full or Part-Time Positions posted on the Job Board by GigSmart Requesters. GigSmart shall not be liable to you or any other person for any losses incurred by you as a result of such suspension. If you are temporarily suspended from the Platform, we will provide you written notice of when your suspension may be lifted.

You may cancel your use of the Platform and/or terminate your Account at any time. Please note that if your Account is canceled, we do not have an obligation to delete or return to you any Content you have posted to the Platform, including, but not limited to, any reviews. GigSmart reserves the right, but does not undertake any duty, to take appropriate legal action, including without limitation the pursuit of civil, criminal and/or injunctive redress against you for continuing to use the Platform or the GigSmart Content during suspension or after termination, and you agree that GigSmart may recover its reasonable attorneys' fees and court costs from you for such actions. Even while your account is suspended and after it is terminated, these Terms of Use will remain enforceable against you. All other terms that, by their nature, may survive suspension and/or termination of these Terms of Use shall also be deemed to survive such suspension.

### **Assumption of Risk**

You assume all risks when using the Platform, including, without limitation, all of the risks associated with interactions with other Users. You agree to take all necessary precautions when interacting with other Users.

### **Limitation of Liability**

You acknowledge and agree that, to the maximum extent permitted by law, the entire risk arising out of your access to and use of the Platform and collective content, your offering or providing services or requesting or receiving services through the platform, and any contact you have with other users of GigSmart or third parties, whether in person or online, remains with you. Neither GigSmart nor any other party involved in creating, producing, or delivering the platform will be liable (whether based on warranty, contract, tort (including negligence), product liability or any other legal theory, and whether or not GigSmart has been informed of the possibility of such damage, even if a limited remedy set forth herein is found to have failed of its essential purpose) for: (a) any incidental, special, exemplary or consequential damages, including lost profits, loss of data or loss of goodwill; (b) service interruption, computer damage or system failure; (c) the cost of substitute products or services; (d) any damages for personal or bodily injury or emotional distress arising out of or in connection with these terms; (e) the use of or inability to use the platform, services or collective content; (f) any communications, interactions or meetings with other users of the Platform or other persons with whom you communicate or interact as a result of your use of the platform; or (g) your offering or providing services or requesting or receiving services through the platform.

### **Violations of Eligibility Conditions**

As noted above, if GigSmart becomes aware of or believes that there are violations of the Eligibility Conditions by any User or that any User has otherwise provided false or misleading information, it may, among other things, suspend and/or terminate such User with or without notice at its sole discretion. In the event of any suspension or termination, you agree to make no further use of the Platform after termination or during the suspension.

You understand and agree not to, and not to permit or encourage anyone else to, do any of the following in connection with the Platform:

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- Ignore or violate any of the Conditions of Eligibility;
- Use, hack, modify, or change any User's account;
- Misrepresent yourself or the Services you offer as a Worker, or otherwise misrepresent your identity, qualifications, profile, or "request;"
- Post any Content in any inappropriate manner or context, including categories or areas on the Platform, ratings, or other information and data;
- Use an automated system to access the Platform for any inappropriate purpose without GigSmart's prior written approval, specifically, but not limited to, robots, spiders, offline readers, or scrapers;
- Duplicate or copy, or otherwise misuse or misappropriate, copyrighted, proprietary, or other Platform information and/or Content for use on any third party site;
- Misuse and/or disrupt the Platform by transmitting more request for Services messages in a given period of time and with such volume that a human being could not reasonably produce by using available industry web browsers;
- Search engines may use spiders or robots to copy materials from the Platform for the sole purpose of creating publicly available searchable indices of materials, but not for caches or archives of the same. GigSmart reserves the right to revoke these exceptions either generally or specifically;
- Undertake any action, which in GigSmart's sole discretion unreasonably interferes with the Platform's infrastructure, its operations, its use by GigSmart, Workers, Requesters, and third parties; undertake any action that circumvents, disables, or otherwise interferes with the Platform's fee structure, billing procedures, or fees owed, or with the security features of the Platform, including, without limited to, the use of viruses or other technologies and processes that may damage GigSmart or Users;
- Use the Platform in any way that violates any User's proprietary rights, including copyrights, trademarks, service marks, confidential information, rights to privacy, or other protected rights;
- Misappropriate, accumulate, use, disclose, or publish any personally identifiable information and data for any reason, including, but not limited to, commercial solicitation purposes, names or other account information from Requests and Users, or use the Platform itself for any reason not explicitly authorized by the Terms of Use;
- Use another person's Account, misrepresent yourself or Services offered through the Platform, misrepresent your identity or qualifications, or post Content in any inappropriate category or areas on the Platform;

- Use any automated system, including but not limited to robots, spiders, offline readers, scrapers to access the Platform for any purpose without GigSmart's prior written approval;
- In any manual or automated manner copy copyrighted text, or otherwise misuse or misappropriate Platform information or Content, including but not limited to use on a mirrored, competitive, or third party site;
- Undertake or perform any actions inappropriate or unlawful, including the submission of inappropriate or unlawful content, content which is defamatory, profane, harassing, hateful, or otherwise discriminatory in nature, or which sponsors, promotes, supports, or encourages inappropriate or illegal activity or conduct, which would be considered a criminal offense or which would give rise to civil liability or violate any federal, state, or local law or ordinance;
- Offer or request a Service inappropriate for the Platform, including any Service which (a) is not in supported categories or offers only products or goods; (b) establishes a directory or referral system or source; (c) offers loans, lending Services or products, debt consolidation, or counseling; (d) offers rental space, residential, commercial, or storage; (e) promotes any type of activity or event, such as conferences, parties, "flash" events, pub crawls, trivia parties, etc.; (f) competes with GigSmart; (g) is based outside of the United States; (h) promotes, offers, or facilitates any type of investment scheme, crowdfunding, raffle, lottery, gaming, or sporting pool activity, junk mail, spam, chain letters, pyramid schemes, discount cards, online surveys or contests, games or chance or giveaways; and (i) provides content inappropriate to the Platform;
- Submit User Content that damages the experience of any user, including but not limited to (a) requests to download non-GigSmart mobile applications and/or links that direct the user to mirrored websites where the user must enter information that is redundant with what has already been entered on GigSmart, (b) offers to purchase any other Service outside of GigSmart, or (c) using a profile page or username to promote Services not offered on or through the Platform;
- Take any action that interferes with or undermines the usefulness of the rating systems;
- Engage in any illegal or fraudulent conduct, including, but not limited to any action or conduct designed to interfere with the payment of fees through the Platform;
- Defame, abuse, harass, harm, stalk, threaten or otherwise violate the legal rights (including without limitation rights of privacy and publicity) of others;

- Use the Platform or engage with other Users for any purpose that is in violation of federal, state, or local law or regulation, including without limitation, wage and hour and working condition laws and regulations;
- Upload files that contain software or other material that violates the rights of any third party, including, without limitation, intellectual property rights or rights of privacy or publicity;
- Upload files that contain viruses, Trojan horses, worms, time bombs, spiders, cancelbots, corrupted files, or any other similar software, malware or materials that may damage, interfere with, disrupt, impair, disable or otherwise overburden the operation of any device, computer system or network;
- Take any action that would undermine any aspect of the Platform or use the Platform in any manner that could interfere with, disrupt, or inhibit other users from fully enjoying the Platform or that could damage, disable, overburden or impair the functioning of the Platform in any manner;
- Impersonate another person or allow any other person or entity to use your username, password or membership;
- Post the same content repeatedly or spam – spamming is strictly prohibited;
- Download any file posted by another User that you know, or reasonably should know, cannot be legally distributed through the Platform;
- Access, download, or copy any information, content and/or materials from the Platform through artificial means (including without limitation spiders, scrapers, hacking devices, computer programs, bots or other such means); and/or
- Reproduce, duplicate, copy, sell, resell or exploit any information, materials or content on the Platform.

The above list is in no way a complete listing of non-permissible activities and GigSmart retains the right to deactivate, alter or otherwise change any Users account at any time.

## 4. USER ACCOUNTS & ACTIVITY

### Worker Representations and Warranties

By registering or using the Platform to offer, post or provide Services, Workers represent and warrant that they, and the employees, agents, contractors, and subcontractors who may perform work for them, are properly and fully qualified and experienced, and licensed, certified, bonded, and insured, as required by applicable laws or regulations to which they

may be subject in the jurisdiction(s) in which they offer their Services and in relation to the specific job they are performing.

Workers further represent and warrant that: they have exclusive control over the details of the Services to be performed; the occupational skills, if any, required to perform the Services; the duration of time required to complete the performance of the Services to be provided; the tools, equipment and materials required to perform the Services to be provided and the amount of payment they require to perform the Services to be provided.

Workers offering Services further represent and warrant that they are independent contractors, and no agency, partnership, joint venture, or employment relationship is created between the Workers and GigSmart nor between the Workers and the Requesters as a result of the Terms of this Agreement, or the use of the Platform to provide Services to Users. GigSmart and Workers acknowledge that one does not direct or control in any way the day-to-day activities of the other or create or assume any obligation on behalf of the other.

Workers will take no position with respect to or on any tax return or application for benefits, or in any proceeding directly or indirectly involving GigSmart that is inconsistent with you being an independent contractor and not an employee of GigSmart.

Workers are not the employees or agents of GigSmart, and you are not authorized, and must not represent to any third party that you are authorized to make any commitment or otherwise act on behalf of GigSmart.

As independent contractors, Workers are solely responsible for determining which requests for Services from Requesters they choose to accept and how, when and where they will provide the requested Services.

Workers are not entitled to or eligible for any benefits that GigSmart, its parents, subsidiaries, affiliates or other related entities may make available to its own employees.

Because Workers are independent contractors, neither the Requesters or GigSmart will withhold or make payments for Social Security, make unemployment insurance or disability insurance contributions, or obtain Workers Compensation insurance on Workers behalf. If, notwithstanding the foregoing, you are reclassified as an employee of GigSmart, which GigSmart denies, or any affiliate of GigSmart, which GigSmart denies, by the United

States Internal Revenue Services (“IRS”), the US Department of Labor (“DOL”) or by any other federal, state or local agency, you agree that you will not, as result of such reclassification, be entitled to or eligible for, on either a prospective or retrospective basis, any employee benefits under any plans or programs established or maintained by either GigSmart in any of its parents, subsidiaries, affiliates or related entities.

Users are solely responsible for filing all tax returns and submitting all payments as required by any federal, state, or local tax authority arising from the payment to Workers for Services performed for Requesters.

Users will comply with all applicable federal, state, local and foreign laws governing self-employed individuals, where applicable, including laws requiring the payment of taxes, such as income and employment taxes, and Social Security, disability, and other contributions. You agree to indemnify GigSmart for the cost of any tax liabilities incurred by GigSmart as a result of your failure to pay all applicable taxes in a timely manner.

Users acknowledge and agree that the use of the Platform does not violate any collective bargaining agreements for which you are subject in any capacity. The Platform shall not be used to circumvent any obligations you may have under any such collective bargaining agreement or labor union, including which such agreements are in dispute or subject to negotiations for renewal.

By accepting these Terms you authorize GigSmart to share your information with third-party vendors on an as needed basis only.

### **Verified Workers**

A Requester may post the availability of a Gig as requiring a verified background check. GigSmart partners with third-party companies that perform services associated with background checks and screenings. GigSmart hereby expressly disclaims, and you hereby expressly release, GigSmart from any and all liability whatsoever for any controversies, claims, suits, injuries, loss, harm, or damages arising from, or in any way related to, your request to have a background check obtained through GigSmart’s third-party background check service provider (Checkr). This includes, but is not limited to, any inaccuracy, untimeliness, or incompleteness of such a background check, or any misstatements or misrepresentations made therein. Services available from our third party providers may include, but are not limited to, the following: SSN Trace, Address History, National Criminal Records Check, County Criminal Records Check, Sex Offender Registry Check, Federal

Criminal Records Check, Global Watchlist Records Check, State Criminal Records Check, County and Federal Civil Records Check, Driver Check, National and International Employment Verifications, Personal or Professional Reference Checks, National and International Education Verifications, Drug Screenings, Credit Checks. For additional information on third parties, see section 'Third Parties and Content'.

The use and determination of verification of your background check will be determined in accordance with the law of the jurisdiction of the Gig, including, but not limited to, any applicable "Fair Chance Act" or "Ban the Box" law or regulation in effect at the time of the check. You acknowledge and agree that Gigs are posted on the Platform in a short amount of time prior to the start of the Gig, and therefore, any Gig may expire prior to your permissible response time to any background check results under applicable laws.

You (Workers and Requesters) acknowledge and agree that the determination to verify a Worker for verified Gigs is subject to certain jurisdictions' laws and regulations on the use of background checks, including, but not limited to, New York, California, Washington, and the District of Columbia. In some jurisdictions, Workers may still be eligible for Gigs irrespective of items reported on a background check. GigSmart shall not be liable for any determination made as to the verification of any Worker for a Gig.

### **Insurance**

As an independent contractor, Worker is solely and exclusively responsible for Worker's own insurance. Specifically, in the event that Worker is injured while working in the course and scope of an engagement sourced through GigSmart, Worker acknowledges and understands that Worker will not be covered by any workers compensation insurance coverage that GigSmart may provide to its employees. Further, in the event that Worker's actions cause an injury to a third party while Worker is working in the course and scope of performing an engagement sourced through GigSmart, Worker acknowledges and understands that Worker will not be covered by any general liability or automobile liability insurance coverage that GigSmart may have, and that GigSmart is not making any commitment to defend and/or indemnify Worker in such circumstances, and specifically denies such obligation.

Certain GigSmart Workers must have occupational accident insurance coverage in order to perform certain gig engagements. GigSmart has arranged to have occupational insurance coverage available through On-Demand Independent Contractors Association ("ODICA")

for only certain types of gigs. Workers must obtain occupational accident insurance from ODICA's insurance carrier, OneBeacon Accident & Health ("OneBeacon"). You will be charged a Trust and Support Fee, the fee is for benefits that may include insurance, and you agree to pay that Trust and Support Fee. Additionally, you will be required to become a member of ODICA. Further information about ODICA and OneBeacon Accident and Health will be available on the website and in the GigSmart App from time to time. You understand and agree that the Trust and Support Fee related to the provision of occupational insurance is owed by you and will be deducted from the proceeds you earn for each gig engagement worked. By accessing and using the Platform, you consent and agree to these terms and agree to enroll as a member of ODICA. You also agree to abide by the Bylaws of ODICA, as amended from time to time.

Requesters are able to submit claims for Non-Owned Auto Liability Insurance as well as General Liability. Any correspondence or requests associated with claims for Non-Owned Auto Liability or General Liability Insurance are to be communicated directly with and through GigSmart. Requester agrees that no claims below \$10,000 will be submitted. Additionally, Requesters agree that they are responsible for covering any claims up to \$10,000 and that in the event a claim exceeds \$10,000 they will be responsible to cover the first \$10,000 of each individual claim. **THIS INSURANCE ARRANGED BY GIGSMART DOES NOT EXTEND TO ANY "PROJECT GIGS" OR ANY GIGS IN WHICH A WORKER IS NOT PAID ON AN HOURLY PAY RATE. WORKER'S AND REQUESTERS ACKNOWLEDGE AND AGREE THAT NO INSURANCE IS ARRANGED BY GIGSMART FOR SUCH GIGS.**

The General Liability insurance coverage DOES NOT cover the following Gigs if such Gigs includes any of the following: use of cranes, bulldozers, trucks or any other forms of construction equipment, scaffolding erection and assembly or related services, aircraft, watercraft, video game developers, placements in correctional facilities or mental health institutions, or the cannabis industry (or any part thereof).

The Non-Owned Auto insurance coverage DOES NOT cover the following Gigs if such Gigs includes any of the following: use of cranes, bulldozers, trucks or any other forms of construction equipment, scaffolding erection and assembly or related services, aircraft, watercraft, video game developers, placements in correctional facilities or mental health institutions, or the cannabis industry (or any part thereof).

Refer to [GigSmart's insurance policy page](#) for more information.

### **On-Demand Independent Contractors Association (“ODICA”)**

Membership in ODICA is non-transferable and only one membership in ODICA is allowed per eligible person. ODICA bylaws are available upon request. Nothing herein creates the relationship of employer-employee between member and ODICA. Members of ODICA have access to certain benefits and/or products offered by ODICA. Benefits and/or products are offered at the sole discretion of ODICA, and may vary by availability, vendor or the member's state of residence. ODICA may change vendors or immediately terminate the benefits and/or products offered without prior notice to members. Termination of membership in ODICA will result in the loss of such benefits and/or products. By accepting these Terms you authorize ODICA to share your information with such third-party vendors on an as needed basis only.

By accepting these Terms, you also understand that you are enrolling as a member of ODICA with no voting rights. You understand and certify to the best of your knowledge that all information you provide to ODICA is complete and truthful and you are at least 18 years of age. Membership in ODICA is effective the first day of the month in which you enroll as a member. You must continue your membership in ODICA to participate on the Platform and accept gig engagements.

### **Account Registration and Other Submissions**

A person, company, entity or organization may access the Platform without registering for an account. To access and participate in certain features of the Platform, you will need to create a password-protected account (“Account”). You may register for an Account using your existing Facebook or Google account and log-in credentials (your “Third Party Site Password”). You agree to provide accurate, current, and complete information during the registration or request submission process and at all other times when you use the Platform, and to update your information to keep it accurate, current, and complete. You are solely responsible for safeguarding your GigSmart password and, if applicable, your Third-Party Site Password. You are solely responsible for all activity that occurs on your Account, and you will notify GigSmart immediately of any unauthorized use. GigSmart is not liable for any losses by any party caused by unauthorized use of your Account. Notwithstanding the foregoing, you may be liable for the losses of GigSmart or others due to such unauthorized use.

### **Use of the Platform**

You agree to use the Platform responsibly, exercise appropriate due diligence as a User and

at all times act in accordance with the Terms of Use set forth herein in a manner that is appropriate to the purpose of the Platform.

### **Account Security**

You are responsible for maintaining the confidentiality of your passwords and account information on the Platform, and you are fully responsible for all activities that occur under your account. You agree to immediately notify GigSmart of any unauthorized use of accounts or any other breach of security.

### **Disputes Between or Among Users**

In the event that a dispute is initiated by either a Worker or Requester, you agree to cooperate and meet informally to resolve the dispute. If the dispute is not resolved, you acknowledge and agree that GigSmart is under no obligation to become involved in or impose resolution upon you in any such dispute.

### **Prohibited Uses**

The Platform is for the use of Workers and Requesters only and cannot be used in connection with any separate commercial enterprises or activities without the express written consent of GigSmart. It is to be used exclusively for Requesters requesting Services from Workers and Workers offering to provide Services to Requesters. The Platform may not be used by any person or organization to recruit for another website or Service or to solicit, advertise, or contact others for employment, contracting, or any other purpose for a business not affiliated with GigSmart without express written permission from GigSmart. You agree not to use User Content in order to contact, advertise, solicit, or sell to others without their express consent.

You further agree not to collect User Content or any other information, materials or content obtained through the Platform, including without limitation names, phone numbers, email addresses, profiles, copyrighted text, or job listings, or otherwise misuse or misappropriate information, materials or content, or any information obtained through the use of the Platform, using manual or automated means, including, without limitation, through web scraping, without express written permission from GigSmart. Should GigSmart have a reasonable basis to believe that you violated this section, GigSmart reserves the right, in addition to other remedies and at its sole discretion, to assess a \$10,000 daily penalty fee for scraping and/or recruiting.

## 5. USER CONTENT

“User Content” is defined as any information, content, messages, photos, and/or materials a User posts on or through the Platform, submits to GigSmart and/or submits to any other User on or through the Platform or by any other medium or method. GigSmart acts as a passive conduit for User Content, and Users, not GigSmart, are solely responsible for the User Content they post, submit or transmit through the Platform. User Content, including without limitation in connection with registration and Users’ profiles, is self-reported and you understand and agree that GigSmart does not independently verify that any or all of the User Content is accurate, appropriate, timely or complete. You understand and agree that you make your own decisions and assessments about User Content and about persons to engage or engagements to accept.

GigSmart hereby expressly disclaims, and you hereby expressly release GigSmart from, any and all liability whatsoever for any controversies, claims, suits, injuries, harm, loss and/or damages, arising from and/or in any way related to any User Content, including without limitation to any acts of or reliance upon other Users with respect to such User Content and/or any comments made by a User about others.

You represent and warrant that you are the owner or licensee or otherwise have the right to post or submit such User Content, and you grant to GigSmart an irrevocable, perpetual, non-exclusive, fully paid, worldwide, sublicensable license to use, store, remove, delete from storage, copy, perform, display, reproduce, adapt, modify, prepare derivative of, and distribute such User Content and to incorporate such User Content into other works.

You agree that you are solely responsible for any User Content you post or submit, and you represent and warrant that any User Content: (A) shall not be inaccurate, untimely, incomplete, fraudulent or misleading, including without limitation in connection with registration, your profile and/or use of the Platform; (B) shall not infringe any third party’s rights, including without limitation copyright, patent, trademark, trade secret or other propriety right or rights of publicity or privacy; (C) shall not violate any law, statute, ordinance, rule or regulation, including without limitation those governing export control, consumer protection, unfair competition, anti-discrimination, false advertising or the provision of child care, elder care or health care; (D) shall not be defamatory, libelous, threatening, harassing, abusive, or inflammatory; (E) shall not be obscene, indecent, suggestive, violent, offensive or contain pornography or be harmful to minors; (F) shall not

contain any viruses, Trojan horses, worms, time bombs, spiders, cancelbots, corrupted files, or any other similar software, malware or materials that may damage, interfere with, disrupt, impair, disable or otherwise overburden the operation of any device, computer system or network; and (G) shall not create liability for GigSmart or cause GigSmart to lose (in whole or in part) the Services of the GigSmart ISPs or other partners or suppliers. GigSmart may, but is not obligated to, review or delete any User Content that, in GigSmart's sole discretion, violates these Terms of Use.

Although GigSmart has no obligation to screen, edit or monitor User Content, GigSmart reserves the right, and has absolute discretion, to remove, screen or edit User Content or suspend or terminate your account for any reason or for no reason, including if it believes that any User Content violates any of the foregoing rules. You agree to make no further use of the Platform during suspension or after termination. Enforcement of the User Content rules set forth in these Terms of Use is solely at GigSmart's discretion, and failure to enforce such rules in some instances does not constitute a waiver of GigSmart's right to enforce such rules in other instances. In addition, these rules do not create any private right of action on the part of any third party or any reasonable expectation that the Platform will not contain any content that is prohibited by such rules.

Although GigSmart has no obligation to do so, GigSmart reserves the right, and has absolute discretion, to remove, screen or edit User Content posted or stored on the Platform at any time and for any reason without notice, and you are solely responsible for creating backup copies of and replacing User Content you post or store on the Platform at your sole cost and expense.

## 6. PAYMENTS & FEES

You agree to pay all applicable Fees or charges based on the Fee and billing terms then in effect, regardless of whether you have an active Account. Charges shall be made to your credit card, Stripe or other payment method designated at the time you make a purchase or request a Service. If you do not pay on time or if GigSmart cannot charge a credit card, Stripe or other payment methods for any reason, GigSmart reserves all rights permissible under law to recover payment and all costs and expenses incurred, including reasonable attorneys' fees, in our pursuit of payment. You expressly acknowledge and agree that all communications regarding delinquent accounts or Fees will be made by electronic mail or

telephone. GigSmart may initiate these communications or may use a third party to do so, including, but not limited to, a third-party collection agency. If you cancel your Account at any time, you will not receive any refund. If you have a balance due on any account, you agree that GigSmart may charge such unpaid Fees to your credit card or otherwise bill you for such unpaid Fees. You understand and agree that you are solely responsible for determining your own tax reporting requirements in consultation with tax advisers and that we cannot and do not offer specific tax advice to Users.

GigSmart may use third party payment processing Services to process credit card payments and information in connection with the payment of fees and other amounts payable in connection with the Platform. GigSmart hereby expressly disclaims, and you hereby expressly release GigSmart from, any and all liability whatsoever for any controversies, claims, suits, injuries, loss, harm and/or damages arising from and/or in any way related to GigSmart's use of third-party payment processing Services, including without limitation for any damage that may result should any such information be released to any third parties. For further information about GigSmart's use of payment processing Services, please contact GigSmart by email at [support@gigsmart.com](mailto:support@gigsmart.com).

### **Payment Services**

GigSmart may offer access to a Third Party Service that provides Users with the ability to process payments for their Services through the Platform (the "Payment Service"). Stripe is the provider of these Payment Services and information about Stripe is available at [stripe.com](https://stripe.com). If you have questions regarding Stripe, please contact Stripe at [support@stripe.com](mailto:support@stripe.com).

### **Direct Payment Fees**

Upon compensating a worker outside of the GigSmart platform as a non-W2 employee you agree to pay a "Direct Payment Fee". The full Direct Payment Policy can be found at: <https://gigsmart.com/direct-payment-policy/>

### **Cancellation Fees**

Requesters who cancel shifts prior to the scheduled start time will be charged a cancellation fee of the shift cost. Shift cost includes hours scheduled multiplied by hourly rate and the number of scheduled workers, including GigSmart fee. Cancellation fees vary based on when shifts are published, scheduled, and subsequently canceled.

Refer to [GigSmart's cancellation policy](#) for more information.

## 7. COMMUNICATIONS

### **Location Information: Consent to Use of Data and Mobile Communications**

The Platform may implement a location feature whereby they will automatically collect your geolocation information if you provide your consent. In such event, the Platform will use and share such location to enable Workers to determine what gigs are nearby and Requesters to determine what Workers are nearby. GigSmart may also use location information to provide information and advertising to Users. If you want to stop the automatic collection of your location information you may do so by using the privacy settings in the Platform and/or on your device and/or by uninstalling the App.

You also consent to GigSmart communicating with you about the Platform or in connection with the features, functions, and activities contained therein by SMS, text message, email or other electronic means. Your carrier's normal messaging, data and other rates and fees will apply to these communications. The provision and delivery of text messages by GigSmart or our text message service providers is governed by our SMS Terms and Conditions, which are expressly incorporated herein.

### **Right to Use Name and Logo for Promotional Purposes**

User hereby grants GigSmart a license to use, publish, and display Users' name and logo on GigSmart's website and other GigSmart company materials for the purpose of indicating that User has agreed to the Terms of Use. User also agrees to allow GigSmart to publish a description of the User's company alongside User's name and logo. GigSmart hereby grants User a license to use, publish, and display GigSmart's name and logo in any similar manner. At the express written request of User or GigSmart, the other party shall cease using, publishing, and displaying the other party's name and/or logo within fourteen (14) days of such request.

### **No Professional Advice; Information Only**

Any information, materials, content and/or advice provided through the Platform, whether by GigSmart, Users or third-parties, including without limitation GigSmart blogs, including without limitation at [GigSmart.com/blog](https://GigSmart.com/blog) (the "Blog"), the GigSmart Facebook pages, including without limitation at [www.facebook.com/GigSmartApp](https://www.facebook.com/GigSmartApp) and, the GigSmart Twitter account, including without limitation at [www.twitter.com/GigSmartApp](https://www.twitter.com/GigSmartApp), are for informational purposes only. If you have specific concerns or a situation arises requiring professional advice, you should consult with an appropriately trained and qualified

professional. GigSmart hereby expressly disclaims, and you hereby expressly release GigSmart from, any and all liability whatsoever for any controversies, claims, suits, injuries, losses, harms and/or damages arising from and/or in any way related to the information, materials and content provided through the Platform, including without limitation on the Blog, Facebook pages and Twitter account.

GigSmart reserves all of its rights under the Communications Decency Act, including, without limitation, its right to remove anything objectionable to GigSmart in its sole discretion. You may report any alleged improprieties by any User to GigSmart by email at [support@GigSmart.com](mailto:support@GigSmart.com). However, enforcement of these Terms of Use is solely at GigSmart's discretion, and failure to enforce these Terms of Use in some instances does not constitute a waiver of GigSmart's right to enforce these Terms of Use in other instances. In addition, these Terms of Use do not create any private right of action on the part of any User or third party or any reasonable expectation that the Platform will not contain any content or conduct that is prohibited by such Terms of Use.

### **Engagement In and Storing Platform Communications**

By becoming a User, you expressly consent and agree to accept and receive electronic and other communications from GigSmart. You expressly consent and agree to receive communications from us to facilitate communications among Users, provide our Services, and enforce the Terms of Use. GigSmart may engage in, monitor, record and store communications that it has with Users for quality control, training purposes and to protect its rights under this Agreement. GigSmart may without further notice or warning, in its discretion, engage in, access, store, use, and disclose such communications, including chat messaging, call transcripts, and other data relating to chat messaging and calls which occur through the Platform for its business purposes, including to provide and improve Services, fraud prevention, and to identify violations of this Agreement.

### **Communications Data Information**

GigSmart enables Users to communicate with each other by chat messaging or calling through its internal communications Platform. Users and GigSmart will have the ability to send chat messages and call each other through the Platform. In the course of providing this service through the Platform, GigSmart will engage in, receive and store information regarding each chat message or call, including date, time, and content. GigSmart will store chat messages, calls, or any other content GigSmart deems appropriate for an indefinite period of time in its discretion. Users will be able to view their chat messages while stored;

however, will have not have access to the recordings of any calls. GigSmart uses the content stored and information it collects to enable communications between Users. For example, a worker may text or call a requester to confirm instructions, change a location, or add on services. GigSmart may also use this information for quality control purposes, to improve its Services, for fraud prevention, to monitor for inappropriate communications, and to identify violations of this Agreement.

### **Comments, Questions, and Suggestions**

You acknowledge and agree that all comments, questions, and suggestions you provide to GigSmart become the exclusive property of GigSmart. You forever assign to GigSmart all right, title, and interest in and to all comments, questions, and suggestions, including, without limitation, any proprietary or intellectual property rights therein, such as Service mark, trademark, patent, copyright, or trade secret. At GigSmart's request and expense, you agree to undertake any acts which GigSmart may reasonably request to assist it in acquiring, perfecting and maintaining intellectual property rights and other legal protections for any such comments, questions, and suggestions. GigSmart shall have no obligation concerning such comments, questions, and suggestions, including, but not limited to, no obligation to return any materials associated with the comments, questions, and suggestions, or acknowledge receipt of any comments, questions, and suggestions. By sending or otherwise transmitting comments, questions, and suggestions to GigSmart, you represent and warrant that you have the right to disclose such comments, questions, and suggestions and that they do not violate the rights of any other person or entity. This paragraph shall survive any termination of your Account or the Platform.

You are solely responsible for all of your communications and interactions with other Users of the platform and with other persons with whom you communicate or interact as a result of your use of the platform. You understand that GigSmart does not make any attempt to verify the statements of users of the platform or to review or vet any services. GigSmart makes no representations or warranties as to the conduct of users of the platform or their compatibility with any current or future users of the platform. You agree to take reasonable precautions in all communications and interactions with other users of the Platform and with other persons with whom you communicate or interact as a result of your use of the platform, particularly if you decide to meet offline or in person and give or receive services. GigSmart explicitly disclaims all liability for any act or omission of any users or third parties.

## 8. CONFIDENTIALITY

### Privacy Policy

Please refer to the GigSmart Privacy Policy at [GigSmart.com/privacy](https://GigSmart.com/privacy) for information on how GigSmart collects, uses and discloses information about you.

### Use and Disclosure

From time to time, you may be given access to confidential information in the course of performing engagements that you receive through GigSmart. During the term of this Agreement and at all times thereafter, you will (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted or required by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining GigSmart's express prior written consent on a case-by-case basis.

### Standard of Care

You will protect the Confidential Information from unauthorized use, access, or disclosure, in the same manner, you protect your own confidential or proprietary information of a similar nature, and with no less than reasonable care.

### Exceptions

Your obligations under this Confidentiality section will terminate with respect to any particular information that you can prove, by clear and convincing evidence, (a) you lawfully knew prior to GigSmart's first disclosure to you, (b) a third party rightfully disclosed to you free of any confidentiality duties or obligations, or (c) is, or through no fault of you has become, generally available to the public. Additionally, you will be permitted to disclose Confidential Information to the extent that such disclosure is expressly approved in writing by GigSmart, or is required by law or court order, provided that you immediately notify GigSmart in writing of such required disclosure and cooperate with GigSmart, at GigSmart's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure, including filing motions and otherwise making appearances before a court.

### **Removal & Return**

Upon GigSmart's request and upon any termination or expiration of this Agreement, you will promptly (a) return to GigSmart or, if so directed by GigSmart, destroy all Confidential Information (in every form and medium), (b) permanently erase all electronic files containing or summarizing any Confidential Information, and (c) certify to GigSmart in writing that you have fully complied with these obligations.

## **9. INTELLECTUAL PROPERTY**

GigSmart Content is protected by the copyright, trademark, and proprietary laws of the United States, foreign countries, and international conventions. Except as expressly provided in these Terms, GigSmart and its licensors exclusively own all right, title, and interest in and to the Platform and GigSmart Content, including all associated intellectual property rights. All trademarks, service marks, logos, trade names and any other proprietary designations of GigSmart used herein are trademarks or registered trademarks of GigSmart. Any other trademarks, service marks, logos, trade names, and any other proprietary designations are the trademarks or registered trademarks of their respective owners.

Except for the license expressly granted in these Terms of Use, you are not granted any rights in or to the Platform by implication, estoppel, or other legal theory, and all rights in and to the Platform not expressly granted in these Terms of Use are hereby reserved and retained by GigSmart. The Platform, the GigSmart Content, and all information, materials, tools, code and content contained therein, including without limitation all text, graphics, logos, editorial content, data, formatting, graphs, designs, HTML, look and feel, photographs, music, sounds, images, software, videos, designs, typefaces, source and object code, format, directories, queries, algorithms, structure, organization, and other content (collectively "Proprietary Material"), are owned by GigSmart or its licensors or users and is protected by U.S. and international copyright law. This Proprietary Material is protected in all forms, media, and technologies now known or hereinafter developed. GigSmart also owns the coordination, selection, arrangement, and enhancement of such Proprietary Material as a collective work and/or compilation under the United States Copyright Act, as amended. You may not copy, download, use, redesign, reconfigure, or retransmit anything from the Platform without GigSmart's prior express written permission. Furthermore, you

are not allowed to post, distribute or reproduce any User Content that you do not own, or which you do not have permission to use. Violation of this policy may result in copyright, trademark or other intellectual property rights violations and liability, and subject you to termination or suspension from the Platform and/or civil and/or criminal penalties. In addition, the Platform contains material protected by the copyright, trademark, and proprietary laws of the United States, foreign countries, and International Conventions. Any use of such Proprietary Material, other than as permitted herein, is expressly prohibited without the prior permission of GigSmart and/or the relevant right holder. The Platform service marks, trademarks, logos, and trade names used herein and appearing on the Platform are owned by GigSmart or used with permission of the respective owners, and you acknowledge the rights of GigSmart and the respective third parties therein. You may not copy or use any of these service marks, trademarks, logos or trade names or other proprietary material of any nature without the prior written permission of the owner.

In accordance with the Digital Millennium Copyright Act (“DMCA”) and other applicable laws, GigSmart has adopted a policy of terminating, in appropriate circumstances and at GigSmart’s sole discretion, members who are deemed to be repeat infringers. GigSmart may also, at its sole discretion, limit access to the Platform and/or terminate the accounts of anyone who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

### **Copyright Complaints**

Without limiting the foregoing, owners of copyrighted works who believe that their rights under copyright law have been infringed may take advantage of certain provisions of the DMCA to report alleged infringements. If you believe that your work has been copied and posted on or made accessible through the Platform in a way that constitutes copyright infringement, please provide GigSmart’s designated agent (as set forth below) with the following information:

- - - An electronic or physical signature of the owner of the copyright or the person authorized to act on behalf of the owner of the copyright interest;
    - A description of the copyrighted work or other intellectual property that is claimed to have been infringed, including the URL (Internet address) or other specific location within the Platform

where the infringing material is located. Include enough information to allow GigSmart to locate the material;

- Your address, telephone number, and email address;
- A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright or intellectual property owner, its agent, or the law; and
- A statement by you, made under penalty of perjury, that the information in your notice is accurate, and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

**Designated Agent:**

Name of Agent Designated to Receive Notification of Claimed Infringement:

Eric M. Robbins, Esq.

Full Address of Designated Agent to Which Notification Should Be Sent:

Ulmer & Berne LLP, 600 Vine Street, Suite 2800, Cincinnati Ohio 45202-2409

Telephone Number of Designated Agent:

(513) 698-5148

Facsimile Number of Designated Agent:

(513) 698-5149

Email Address of Designated Agent:

[copyright@GigSmart.com](mailto:copyright@GigSmart.com)

## 10. LINKS TO OTHER SITES

**Third Party Services and Content**

The Platform may contain links or otherwise contain or provide access to third-party products, services, websites, advertisers, applications, information, and content (collectively, "Third Party Services and Content"). Access to these Third-Party Services and Content is provided solely for convenience. For example, the Platform may provide access to a third party payment processing service that enables workers to collect payments through the Platform from requesters who engage them and may make third-party content available through the Platform, such as on the Facebook pages, Blog and Twitter account. You understand and agree that such Third-Party Services and Content are not provided by

GigSmart, and GigSmart does not control or endorse and does not make any representations or warranties regarding such Third-Party Services and Content.

You understand and agree that use of such Third-Party Services and Content is at your own risk, that GigSmart terms of use and policies do not apply to such Third-Party Services and Content, and that GigSmart is not responsible for the privacy or business practices or other policies of such Third-Party Services and Content or for the accuracy, completeness, safety or quality of the third party services and content. You should carefully review any applicable terms and policies that apply to any Third-Party Services and Content. GigSmart is not responsible or liable in any manner for such Third-Party Services and Content, or for any loss or damage of any sort incurred as a result thereof, and GigSmart hereby expressly disclaims, and you hereby expressly release GigSmart from, any and all liability whatsoever for any controversies, claims, suits, injuries, liabilities and/or damages arising from and/or in any way related to such Third-Party Services and Content, including without limitation relating to availability, terms of use, privacy, information, content, materials, advertising, charges, payment, products and/or services.

### **App Store**

You acknowledge and agree that the availability of the App is dependent on the third party from which you received the App, e.g., the Apple iPhone App Store or Google Play App Store ("App Store"). You acknowledge and agree that these Terms of Use are between you and GigSmart and not with the App Store. The App Store is not responsible for the App, the content thereof, maintenance, support Services, and warranty therefore, and addressing any claims relating thereto (e.g., product liability, legal compliance, or intellectual property infringement). You agree to pay all fees charged by the App Store in connection with the App (if any). You agree to comply with, and your license to use the App is conditioned upon your compliance with, all applicable third-party terms of agreement when using the App.

## **11. GENERAL PROVISIONS**

### **U.S. Export Controls**

No part of the Platform may be exported or re-exported into any country to which the U.S. has embargoed goods or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By using

the Platform, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

### **No Third-Party Beneficiaries**

Except as otherwise expressly provided in these Terms of Use, there shall be no third-party beneficiaries to these Terms of Use.

### **No Joint Venture**

You acknowledge that you are not legally affiliated with GigSmart in any way, and no independent contractor, partnership, joint venture, employer-employee or franchiser-franchisee relationship is intended or created by your use of the Platform or these Terms of Use. As such, you shall not have, or hold out to any third party as having, any authority to make any statements, representations or commitments of any kind, or to take any action, that shall be binding on GigSmart, except as provided herein or authorized in writing by GigSmart. GigSmart is not an employment service or agency and does not serve as an employer of Users. GigSmart may recruit Users for employment, secure employment for Users or evaluate or test Users for employment purposes.

### **Limitations on Use**

In the interest of maintaining the performance and availability of the Platform and in enforcing these Terms of Use, GigSmart reserves the right to place certain limitations on your access to the Platform at any time and for any reason. You acknowledge and agree that this term supersedes any specific offer made by GigSmart and that these limitations may be enforced in GigSmart's sole discretion. If you feel that these limitations are interfering with legitimate use of GigSmart in keeping with the Terms of Use, you shall refer this concern to GigSmart and abide by the determination of GigSmart.

### **Arbitration**

Any controversy, claim, suit, injury, harm, loss or damage arising from or in any way related to the use or provision of the Platform or these Terms of Use shall only be resolved by binding arbitration and conducted in accordance with these Terms of Use and the Commercial Arbitration Rules and Arbitration Procedures of the American Arbitration Association ("AAA") then in effect, which can be obtained at any AAA office, at [www.adr.org](http://www.adr.org), or by calling the AAA at 1-800-778-7879. If there is any inconsistency between the AAA Rules and this arbitration provision, the terms of the arbitration provision will control unless the arbitrator determines that the application of the

inconsistent terms would result in a fundamentally unfair arbitration. This arbitration provision will be construed and enforced in accordance with the Federal Arbitration Act, 9 U.S.C. §1 et seq.

Arbitration shall be conducted before a single arbitrator chosen by GigSmart and you and both you and GigSmart expressly waive entitlement, if any, to have any controversy, claim, suit, injury, harm, loss or damage heard before a court or a jury. The arbitrator will base the decision on the evidence presented and in accordance with these Terms of Use and governing law, including statutory and judicial authority. The arbitrator can award the same damages and relief on an individual basis that a court can award to an individual under these Terms of Use and applicable law. The arbitrator will issue a written decision, which will contain the essential findings and conclusions on which the decision is based. The arbitrator's decision will be final and binding upon all parties.

GigSmart's rights and obligations under this arbitration provision shall inure to the benefit of the consumer reporting agency regardless of whether the consumer reporting agency is named as a co-defendant with GigSmart or named individually in a claim that would otherwise be subject to this arbitration provision if brought against GigSmart.

Any such controversy, claim, suit, injury, harm, loss or damage shall be arbitrated on an individual basis and shall not be consolidated in any arbitration with any controversy, claim, suit, injury, harm, loss or damage of any other party. However, this representative action waiver may be severed if it would otherwise render these Terms of Use or this arbitration provision unenforceable.

The arbitration shall be conducted in Cincinnati, Ohio, and judgment of the arbitration award may be entered by any court having jurisdiction thereof. GigSmart may seek any interim or preliminary relief from a court of competent jurisdiction in Cincinnati, Ohio, necessary to protect its rights pending the completion of arbitration. You agree to submit yourself to the personal jurisdiction of the State of Ohio.

Each party will pay its own attorneys' fees, subject to any remedies to which that party may later be entitled under applicable law. You will bear only those costs of arbitration that you would have borne had you brought a claim covered by this arbitration provision in court. If you demonstrate to the arbitrator that the costs of arbitration will be prohibitive as compared to the costs of litigation, GigSmart will pay as much of the arbitration fees as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive.

Notwithstanding anything to the contrary, disputes may be brought before an administrative agency to the extent applicable law requires access to an agency notwithstanding the existence of this arbitration provision. Nothing in this arbitration provision shall be construed to: (i) relieve any party of the duty to exhaust administrative remedies by filing a charge or complaint with an administrative agency and obtaining a right to sue notice, where otherwise required by law; or (ii) prevent either party from cooperating with a federal or state body as required by law. However, you understand that you are not entitled to a double recovery or eligible to receive any monetary benefit from any action brought by an administrative agency except as required by law.

To commence an arbitration against GigSmart, you must file a case with the AAA. Instructions for filing a case with the AAA can be found on its website, [www.adr.org](http://www.adr.org). You must send a copy of any filing to GigSmart at:

GigSmart, Inc.  
 Attn: Megan L. Ebenschweiger, Esq.  
 Robbins, Kelly, Patterson & Tucker, LPA  
 7 West Seventh Street, Suite 1400  
 Cincinnati, Ohio 45202-2417

For more information, see the AAA's claim filing page, [www.adr.org/fileacase](http://www.adr.org/fileacase), or by calling AAA at 1-800-778-7879

### **Class Action Waiver**

The parties further agree that the arbitration shall be conducted in their individual capacities only and not as a class action or other representative action, and the parties expressly waive their right to file a class action or seek relief on a class basis. **YOU AND GIGSMART AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provisions set forth above shall be deemed null and void in their entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

### **Exception: Litigation of Intellectual Property**

Notwithstanding the parties' decision to resolve all disputes through arbitration, either

party may bring enforcement actions, validity determinations or claims arising from or relating to theft, piracy or unauthorized use of intellectual property in state or federal court or in the U.S. Patent and Trademark Office to protect its intellectual property rights.

### **30-day Right to Opt Out**

You have the right to opt out and not be bound by the arbitration and class action waiver provisions set forth above by sending (from the email address you use on GigSmart) a written notice of your decision to opt out to [opt-out@GigSmart.com](mailto:opt-out@GigSmart.com) with the subject line, "ARBITRATION AND CLASS ACTION WAIVER OPT-OUT". The notice must be sent within thirty (30) days of your first use of the Platform, otherwise, you shall be bound to arbitrate disputes in accordance with the terms of those paragraphs. If you opt out of these arbitration provisions, GigSmart also will not be bound by them.

### **Changes to This Section**

GigSmart will provide thirty (30) days' notice of any changes to this section by posting on the Platform or sending you an email. Amendments will become effective thirty (30) days after they are posted on [GigSmart.com](http://GigSmart.com) or sent to you by email. Changes will apply prospectively only to claims arising after the thirtieth (30th) day. If a court or arbitrator decides that this subsection on "Changes to This Section" is not enforceable or valid, then this subsection shall be severed from the section entitled Arbitration and Class Action Waiver, and the court or arbitrator shall apply the first Arbitration and Class Action Waiver section in existence after you began using the Platform.

### **Survival**

This Arbitration and Class Action Waiver section shall survive any termination of your Account or the Platform.

### **Venue: No Class or Representative Actions**

In the event that a tribunal or arbitrator of competent jurisdiction determines that the arbitration provision is unenforceable, you agree that the exclusive forum and/or venue for any controversy, claim, suit, injury, harm, loss or damage arising from or in any way related to the use, inability to use or provision of the Platform or these Terms of Use shall be an Ohio State Court or Federal Court sitting in Hamilton County, and you hereby submit to the exclusive jurisdiction of those courts for purposes of any such proceeding. You and GigSmart agree that any dispute is personal to you and GigSmart and that any such controversy, claim, suit, injury, harm, loss or damage shall be brought on an individual

basis, and shall not be consolidated with any controversy, claim, suit, injury, harm, loss or damage of any other party. However, this representative action waiver may be severed if it would otherwise render these Terms of Use unenforceable.

### **Governing Law**

The Terms and the relationship between you and GigSmart shall be governed in all respects by the laws of the State of Ohio, without regard to its conflict of law provisions. You agree that any claim or dispute you may have against GigSmart that is not subject to arbitration must be resolved by a court located in Hamilton County, Cincinnati, Ohio, or a United States District Court, Southern District of Ohio, located in Cincinnati, Ohio, except as otherwise agreed by the parties. You agree to submit to the personal jurisdiction of the courts located within Hamilton County, Ohio or the United States District Court, Southern District of Ohio located in Cincinnati, Ohio, for the purpose of litigating all such claims or disputes that are not subject to arbitration. You hereby waive any and all jurisdictional and venue defenses otherwise available.

### **Disclaimers**

Your use of the Platform, services or collective content shall be solely at your own risk. You acknowledge and agree that GigSmart does not have an obligation, but reserves the right for any reason, to (a) monitor, review, store, remove, or remove from storage, any user content, user communications, collective content, or other data; or (b) conduct identity verification, background or registered sex offender checks on any user. The platform is provided "as is," without warranty of any kind, either express or implied. Without limiting the foregoing, GigSmart and its affiliates and subsidiaries, and their respective officers, directors, employees and agents explicitly disclaim any warranties of merchantability, fitness for a particular purpose, quiet enjoyment or non-infringement; any warranties arising out of course of dealing or usage of or in trade; any warranties, representations, or guarantees in connection with this platform or the services offered on or through this platform; and any warranties relating to the quality, suitability, truth, accuracy or completeness of any information or material contained or presented on this platform, including without limitation all collective content. GigSmart makes no warranty that the Platform or services will meet your requirements or be available on an uninterrupted, secure, or error-free basis. GigSmart assumes no responsibility, and shall not be liable for any damages to your computer equipment or other property on account of your access to or use of the Platform. GigSmart shall not be liable for any defamatory, offensive, or illegal conduct of any third-party or any loss or damage of any kind incurred as a result of the use

of any data, user content, information, materials, substance, or collective content posted, transmitted, or made available via the platform. No advice or information, whether oral or written, obtained from GigSmart or through the platform, will create any warranty not expressly made herein.

In no event shall the total, aggregate liability of GigSmart and its affiliates and subsidiaries, and their respective officers, directors, employees and agents, arising from or relating to the terms, Platform, services, and/or collective content, or from the use of or inability to use the platform or collective content or in connection with any services or interactions with any other users exceed the total amount of fees actually paid to GigSmart by you hereunder, or one hundred U.S. dollars if no such payments have been made, as applicable.

### **Indemnification**

You agree to indemnify, defend, and hold harmless GigSmart from and against any and all claims, demands, causes of action, losses, expenses, damages and/or liabilities, including reasonable attorneys' fees and court costs, incurred by GigSmart in any way related to your: (a) acts and/or omissions online and offline; (b) breach of these terms of use; (c) disputes with or between other users; (d) use and/or misuse of the platform, including without limitation any information, content and/or materials therein or obtained through the platform; (e) violation of any applicable law, rule or regulation; (f) inaccurate, untimely, incomplete or misleading user content, including without limitation with respect to registration, profile, eligibility conditions and information submitted in connection with consumer reports; (g) misstatements and/or misrepresentations, including without limitation regarding your age and your otherwise meeting the eligibility conditions; (h) use of third party services and content; (i) user content and any acts or omissions with respect to such user content; (j) use of any information in the consumer reports including without limitation in violation of FCRA; (k) use of the payment service; (l) use of ancillary support services; (m) conduct in connection with the use of the platform or any connections made through the platform; and/or (n) use of any services or products or any contracts or arrangements made or provided based on information, content and/or materials obtained on or through the platform. You further agree that you will cooperate as requested by GigSmart in the defense of such claims. GigSmart reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by users, and you shall not, in any event, settle any such claim or matter without the written consent of GigSmart.

## **Release**

If permitted by law, you also agree to release GigSmart from any and all liability whatsoever for any controversies, claims, suits, injuries, loss, harm or damages arising from or in any way related to GigSmart's own negligence, including, without limitation, any negligence relating to:

- - - Any inaccuracy, untimeliness or incompleteness of a user's eligibility conditions;
    - Any misstatements or misrepresentations made by any users;
    - GigSmart content and any other information, materials, and content obtained through use of the platform, including without limitation on the Blog, Facebook pages, Twitter account;
    - Third party services and content, including without limitation relating to availability, terms of use, privacy, information, content, materials, advertising, charges, payment, products and/or services;
    - User content, including without limitation any acts of or reliance upon other users with respect to such user content and/or any comments made by a user about others;
    - Consumer reports; and/or
    - The use of or inability to use the ancillary support services, including without limitation the receipt, acceptance and/or use of information in connection with ancillary support services.
    - This release does not include claims, suits, injuries, loss, harm or damages arising from GigSmart's gross negligence or willful tortious conduct.

## **Force Majeure**

Other than payment obligations, neither GigSmart nor you shall be liable to the other for any delay or failure in performance under the Terms arising out of a cause beyond its control and without its fault or negligence. Such causes may include but are not limited to fires, floods, earthquakes, strikes, unavailability of necessary utilities, blackouts, acts of God, acts of declared or undeclared war, acts of regulatory agencies, or national disasters.

## **Contacting You and E-SIGN Consent**

You agree that GigSmart may provide you with notices, including those regarding changes to the Terms, by email, regular mail, or postings on the Platform. With your consent, GigSmart and Platform Users may also contact you by telephone or through text messages. If you have agreed to receive text messages or telephone calls from GigSmart and Platform Users, you also consent to the use of an electronic record to document your agreement. You

may withdraw your consent to the use of the electronic record by sending an email to GigSmart at [consent@gigsmart.com](mailto:consent@gigsmart.com) or by writing to GigSmart, Inc., 999 18th Street (STE 1750S), Denver, CO, 80202 with "Revoke Electronic Consent" in the subject line. To view and retain a copy of this disclosure or any information regarding your enrollment in this program, you will need (a) a device (such as a computer or mobile phone) with a web browser and Internet access; and (b) either a printer or storage space on such device. For a free paper copy, or to update our records of your contact information, send an email to [consent@gigsmart.com](mailto:consent@gigsmart.com) with your contact information and the address for delivery.

### **Entire Agreement**

These Terms, together with the Privacy Policy and any other legal notices or additional terms and conditions or policies published by GigSmart on the Platform, shall constitute the entire agreement between you and GigSmart concerning the Platform or Services obtained through the Platform. Except as explicitly stated herein, if any provision of the Terms is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of the Terms, which shall remain in full force and effect.

### **Waiver**

No waiver of any provision of these Terms shall be deemed a further or continuing waiver of such term or any other term, and GigSmart's failure to assert any right or provision under these Terms shall not constitute a waiver of such right or provision.

### **Statute of Limitations**

You agree that regardless of any statute or law to the contrary, any claim arising out of or related to the Platform or the Services offered therein must commence within one (1) year after the cause of action accrues. Otherwise, such cause of action is permanently barred.

### **Section Headings**

The section headings in these Terms are for convenience only and have no legal or contractual effect.

### **Contact Information**

If you have any questions about these Terms or the Platform, please contact us by sending an email to GigSmart at [support@gigsmart.com](mailto:support@gigsmart.com) or by writing to GigSmart, Inc., 999 18th Street (STE 1750S), Denver, CO 80202.

### **Governing Law**

These Terms of Use, and all other aspects or use of the Platform, shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to choice of law or conflict of laws rules.

### **Developer Name and Address**

Any questions, complaints or claims with respect to the App should be directed to GigSmart, Inc. at [support@gigsmart.com](mailto:support@gigsmart.com) or by writing to GigSmart, Inc., 999 18th Street (STE 1750S), Denver, CO 80202.

### **Notice**

Any notice or other communication to be given hereunder shall be in writing and given by facsimile, postpaid registered or certified mail, return receipt requested, or electronic mail to GigSmart, Inc., 999 18th Street (STE 1750S), Denver, CO 80202.